SUPREME COURT, U. S.

AUG 13 1970

E. ROBERT SEAVER, CLERK

No. 40 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK et al.,

Defendants.

ANSWER OF DEFENDANT THE WESTERN UNION TELEGRAPH COMPANY TO COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

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PETER F. OATES,
Of Counsel.

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Defendant The Western Union Telegraph Company, answering the complaint of the Commonwealth of Pennsylvania:

1. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the said complaint to the effect that the judgment prayed for herein will necessarily include an order directing this answering defendant to pay amounts received for telegraphic money orders, or a portion or portions thereof, to one or more States which are or may become parties to this action.

2. Denies the allegation contained in paragraph 6 of the said complaint to the effect that this answering defendant assumed the obligations of Postal Telegraph, Inc.; avers that on or about October 7, 1943, pursuant to an agreement

made solely with Postal Telegraph, Inc., a corporation theretofore organized and then existing under the laws of the State of Delaware, this answering defendant acquired substantially all the assets of, and assumed substantially all the liabilities—including those for unpaid telegraphic money orders—of all the subsidiaries of Postal Telegraph, Inc., which acquisition was a "consolidation or merger" as defined in Section 222(a)(1) of the Communications Act of 1934, as then amended; avers that among said subsidiaries of Postal Telegraph, Inc. were thirty-four operating companies, each of which provided telegraphic money order services to the public and each of which had been incorporated in a different State of the United States; avers, upon information and belief, that following said acquisition Postal Telegraph, Inc. and all its subsidiaries were, upon their own initiative, dissolved at various times and under the laws of the various States in which they had been incorporated; avers that said operating subsidiaries of Postal Telegraph, Inc. furnishing telegraphic money order services to the public as aforesaid were at all times both prior to the said acquisition and thereafter, and until their said dissolution, domiciled in thirty-four different States; and therefore further avers that the propriety of treating telegraphic money orders handled by said operating subsidiaries and involved in this action "as if they were originally Western Union telegraphic money orders" as in said paragraph 6 set forth, is a matter of law to be determined by this Court.

3. Denies the allegation contained in paragraph 9a of the said complaint to the effect that the terms and conditions set forth in the money order form ("Exhibit A" attached to the said complaint) are on file with the Interstate Commerce Commission ("I.C.C."); and avers that this defendant's money order terms and conditions were part of its tariff on file with said Commission from 1916 until 1934 but since then have been part of its tariff on file with the Federal Communications Commission.

4. Avers that the 1966 survey referred to in paragraph 16 of the said complaint was conducted by an outside firm retained for that purpose by this defendant; avers that a subsequent, more careful examination made by its own employees of material and records relating to a portion of the money order transactions examined in the said survey disclosed substantial inaccuracies therein; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the 1966 survey results set forth in percentages in paragraphs 16 and 30 of the said complaint.

5. Avers that it has never conducted any adequate study of available records relating to the amount of monies held by it on account of money orders purchased on or before December 31, 1962 from it or from operating subsidiaries of Postal Telegraph, Inc. referred to in paragraph 2 hereof; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the allegation contained in paragraph 18 of the said complaint to the effect that it still holds in excess of $1,500,000 on account of money orders described in said paragraph 18.

6. Avers that this answering defendant has never conducted any adequate study of available records relating to the amount of monies held by it on account of money orders purchased in Pennsylvania on or before December 31, 1962 from it or from any operating subsidiary of Postal Telegraph, Inc. referred to in paragraph 2 hereof, or so purchased anywhere on or before said date and destined to Pennsylvania; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the $100,000 amount set forth in paragraphs 19, 20, 21, 30 and 31 of the said complaint or of the $90,000 amount set forth in paragraph 31 of the said complaint.

7. Avers that whether any monies held by it on account of telegraphic money orders purchased in Pennsylvania on or before December 31, 1962 are subject to escheat or custodial taking by the plaintiff under its laws, as alleged in paragraph 21 of the said complaint, is a question of law to be determined by this Court.

8. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 24, 25 and 26 of the said complaint.

9. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of the below-quoted allegation, contained in the first sentence of paragraph 27 of the said complaint, to the effect that the claim of New York to all monies arising from money orders purchased from January 1, 1930 to January 1, 1958 is being made "without reference to any fact other than the purchase of the money order during such period".

10. Further answering the allegations contained in paragraph 30 of the said complaint:

(a) Denies that the controversy among States in said paragraph 30 described is (necessarily) limited to the States of origin, destination and corporate domicile, as in said paragraph 30 alleged, and avers that the State of last known address of the sender (if not one of the three States already mentioned) would or might be involved in such controversy; and

(b) Denies that determination of whether issuance of a draft constitutes payment of a money order or refund is (necessarily) involved in determining the powers or rights of the States of origin and destination to escheat or take custody of the monies involved, as in subparagraphs (1) and (2) of said paragraph 30 alleged.

11. Further answering the allegations contained in paragraph 31 of the said complaint, denies that the relative rights or powers of the States of origin and destination to escheat or take custody of the monies involved are (necessarily and in themselves) determinative of the absolute rights or powers of the plaintiff respecting money orders destined to Pennsylvania, as in said paragraph 31 alleged.

12. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 32 of the said complaint, and avers further that whether Pennsylvania is entitled to the monies held by this answering defendant for the payment of telegraphic money order drafts issued to sendees or senders in Pennsylvania, under the circumstances stated in said paragraph 32, is a question of law for determination by this Court.

13. Except as hereinabove otherwise pleaded, admits the allegations of the said complaint.

WHEREFORE, this answering defendant joins in so much of the plaintiff's prayer as asks this Court to determine the controversies herein, and respectfully suggests that this Court refer the issues to a Master or District Court to hear the proofs and make such report and recommendations as to this Court may seem advisable.

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